IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

WP(C).No. 18473 of 2007(S)

OP.762/2005 of FAMILY COURT, NEDUMANGAD
.....

PETITIONER:

SADHINA KAMALUDHEEN, D/O.KAMALUDHEEN,
AGED 28 YEARS, RESIDING AT PARAYIL RASHEED MANZIL,
EDAVA VILLAGE, TRIVANDRUM DISTRICT. (NOW RESIDING
IN BLK.403 PANDAM GARDEN 07-23, SINGAPORE-600 403,
REP.BY THE P/A HOLDER MR.ABDUL VAHAB,S/O.HABEEB-
MUHAMMED,AGED 46,R/AT CHAYAKKARIVILAKOM,EDAVA VLGE

BY ADV. SRI.K.KUSUMAM

RESPONDENTS:
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1. FAISAL K.M., S/O. YOUSUF,
AGED 30 YEARS, RESIDING AT KOCHU VEEDU,
EDAVA VILLAGE, THIRUVANANTHAPURAM DISTRICT.

2. YUSUF, AGED 65 YEARS,
RESIDING AT KOCHU VEEDU, EDAVA VILLAGE, EDAVA.

3. FATHIMA BEEVI, D/O. RAHUMA BEEVI,
AGED 57 YEARS, EDAVA VILLAGE, EDAVA.

BY ADV. SRI.M.R.RAJESH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

W.P.(C) 18473 OF 2007

Dated: November 14, 2007

JUDGMENT

Kurian Joseph, J.

The petitioner is aggrieved by Ext.P5 order passed by the Family Court, Nedumangad in OP 762/2005 (Ext.P2). The petition filed by the petitioner herein is for the following reliefs:-

> A. To pass a decree allowing the petitioner to recover the petition A schedule money with 12% future interest from the date of filing of this suit till realization from the respondents 1 to 3 and their properties including petition B and C schedule properties.
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> B. To pass a decree allowing the petitioner to recover an amount of Rs.20.00 lakh with 12% future interest towards the loss and damages caused to the petitioner by the1st respondent.
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> C. To pass a decree creating a charge over the petition B schedule money of the 1st respondent and the petition C schedule immovable properties of the 3rd respondent for the entire plaint claim.
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> D. Such other reliefs which are appropriate and incidental to these proceedings and which this Hon'ble court deems fit and proper, may also be allowed.

2. In the impugned order the Family Court has rightly observed that it is a “petition for recovery of money and other consequential reliefs”. Naturally, it is for the petitioner to establish her case upon evidence. If she fails, it is at her risk. She is represented by her power-of-attorney. There is no case for the Family Court that the power-of-attorney holder is not present or not co-operating and yet the court directed for the personal appearance of the parties. We are afraid, in a suit for realization of money the Family Court may not be justified in insisting for the personal appearance of the petitioner who is, for all purposes, the plaintiff. If the plaintiff is not establishing her case, it is to her detriment. Therefore, we direct the Family Court not to insist on the personal appearance of the petitioner herein for the purpose of Ext.P2 petition. The writ petition is disposed of as above.

KURIAN JOSEPH
JUDGE

HARUN-UL-RASHID
JUDGE.

mt/-